No. 50364-6-II
Pierce County Superior Court No. 16-2-04684-9

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

DONALD HERRICK,

Plaintiff/Appellant,

v.

SPECIAL COMMITMENT CENTER,

Defendant,

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Edmund Murphy, Judge

APPELLANT'S OPENING BRIEF

DONALD HERRICK
(Pro se) Appellant

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pm 1-8-18

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

A. SUMMARY OF ARGUMENT

Plaintiff pro se[1] Donald Herrick submitted a series of Public Records requests to the Special Commitment Center (SCC) that were consistent with the both the PRA and RCW 42.56. These requests were variously mismanaged and responses were not fulfilled consistent with the PRA or RCW 42.56. The trial court subsequently granted summary judgment to the SCC. This court should reverse the trial court ruling.

B. ASSIGNMENTS OF ERROR

201407-PRR-677 & 201408-PRR-67

1. The trial court erred in abusing it's discretion by granting summary judgment (at #1 of Order Granting Defendant's Motion For Summary Judgment [hereafter "OGDMFSJ"]) (CP 377) when Plaintiff did in fact make arrangements for payment of his original request that were both openly communicated to the SCC and reasonable given the circumstances imposed upon him, by the SCC, which should have elicited SCC's fullest assistance and/or reasonableness with Plaintiff's payment in accord with the PRA and RCW 42.56.

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1 "Courts are to liberally construe the 'inartful pleading' of pro se litigants" Boag v. MacDougall, 454 U.S. 364, 365, 102 S.Ct. 700, 701, 70 L.Ed.2d 551 (1982); "It is settled law that the allegations of (a pro se litigant's complaint) 'however inartfully pleaded' are held 'to less stringent standards than formal pleadings drafted by lawyers" Hughes v. Rowe, 449 U.S. 5, 9, 101 S. Ct. 173, 175, 66 L. Ed.2d 163, (1980) (quoting Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 595, 30 L. Ed.2d 652 (1972); see also Noll v. Carlson, 809 F.2d 1446, 1448 "Presumably unskilled in the law, the pro se litigant is far more prone to making errors in pleading than the person who benefits from the representation of counsel"; Ashelman v. Poep, 793 F.2d 1072, 1078, (9th. Cir 1986) "We hold [plaintiff's] pro se pleadings to a less stringent standard than formal pleadings prepared by lawyers."

2. The trial court erred in abusing it's discretion by granting summary judgment (at #2 OGDMFSJ) (CP 378) when there remains questions of material fact as to the official discharge of SCC's obligations under the Public Records Act (PRA) for these specific requests.

3. The trial court erred in abusing it's discretion by granting summary judgment (at #3 OGDMFSJ) (CP 378) when there remains questions of material fact as to the official discharge of SCC's obligations under the Public Records Act (PRA) for these specific requests.

4. The trial court erred in abusing it's discretion by granting summary judgment (at #4 OGDMFSJ) (CP 378) when Plaintiff Donald Herrick did in fact state a cognizable and legitimate claim under the PRA for these specific requests.

201410-PRR-927

5. The trial court erred in abusing it's discretion by granting summary judgment (at #6 OGDMFSJ) (CP 378) because Richard Podriznik never made a request under the PRA. However, even if it is judged that Richard Podriznik did make the request Plaintiff Donald Herrick still clearly retains standing to prosecute claims for this specific request under the PRA.

7. The trial court erred in abusing it's discretion by granting summary judgment (at #9 OGDMFSJ) (CP 379) when there clearly remains questions of material fact as to the official discharge of SCC's obligations under the PRA for this specific request.

8. The trial court erred in abusing it's discretion by granting summary judgment (at #10 OGDMFSJ) (CP 379) when the fact remains and the record shows that there are still numerous unprovided documents, even after continued communications and notice by Plaintiff Donald Herrick and as such SCC's search was, and is, wholly inadequate and in direct contradiction to the stated aims of the PRA.

9. The trial court erred in abusing it's discretion by granting summary judgment (at #11 OGDMFSJ) (CP 379) when SCC has still (knowingly and blatantly) not provided all of the requested materials and thus has still not complied with the PRA. Any "confusion" could have, and should have, been clarified immediately, consistent with obligations under PRA, by SCC by any number of ways as identified by Plaintiff Donald Herrick, as the requestor, when he was adamant that payment was already made.

11. The trial court erred in abusing it's discretion by granting summary judgment (at #14 OGDMFSJ) (CP 379) when it is clearly illustrated that SCC absolutely failed to discharge it's official obligations under the PRA for this specific request.

12. The trial court erred in abusing it's discretion by granting summary judgment (at #15 OGDMFSJ) (CP 379) when Plaintiff Donald Herrick did in fact state a cognizable and legitimate claim under the PRA for this specific request.

13. The trial court erred in abusing it's discretion by granting summary judgment (at #17 OGDMFSJ) (CP 380) when SCC has still (knowingly)

not provided all of the requested materials specifically for **201509-PRR-817** and thus has still not complied with the PRA. SCC absolutely failed to discharge it's official obligations under the PRA for this specific request as well. Plaintiff Donald Herrick did in fact state a cognizable and legitimate claim under the PRA for this specific request.

201408-PRR-720

14. The trial court erred in abusing it's discretion by granting summary judgment (at #19 OGDMFSJ) (CP 380) when there clearly remains questions of material fact as to the official discharge of SCC's obligations under the PRA for this specific request.

15. The trial court erred in abusing it's discretion by granting summary judgment (at #20 OGDMFSJ) (CP 380) when SCC absolutely failed to discharge it's official obligations under the PRA for this specific request. The record shows that even after notice and continued communications to help locate requested documents by Plaintiff SCC still never provided the documents through 201408-PRR-720 until after he filed his PRA complaint and as such SCC's response and search was, and is, wholly inadequate and in direct conflict with the PRA.

16. The trial court erred in abusing it's discretion by granting summary judgment (at #21 OGDMFSJ) (CP 380) when the record shows that Plaintiff Donald Herrick offered SCC notice of the inadequacy their response and as well continued communications to help locate requested documents and still SCC denied this specific request was ever even made

and instead never provided the responsive documents through 201408-PRR-720 until after he filed his PRA complaint.

17. The trial court erred in abusing it's discretion by granting summary judgment (at #22 OGDMFSJ) (CP 380) when Plaintiff Donald Herrick did in fact state a cognizable and legitimate claim under the PRA for this specific request.

C. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

Is Plaintiff Donald Herrick entitled to relief from the trial court order granting summary judgment where it was clearly contradicted by the facts and record of the case ?

D. STATEMENT OF THE CASE

Plaintiff pro se Donald Herrick is a pretrial civil detainee confined at the SCC who is facing a potential lifetime of total confinement through civil commitment proceedings under RCW 71.09. Beginning in July 2014 Plaintiff submitted the first of several Public Records requests (via the PRA and RCW 42.56) to the SCC in order to help in his civil commitment proceedings. Given the numerous actions and/or inactions and unreasonable policies, by and of the SCC, that are incompatible with the PRA and RCW 42.56 Plaintiff was compelled to file a complaint under the PRA.

E. ARGUMENT

Because of the SCC's numerous actions and/or inactions that were contrary to the PRA, RCW 42.56 and plaintiff's specific requests, including, but not limited to, the unresolved questions of material fact, the trial court should not have granted the SCC's motion for summary judgment.

"In reviewing a trial courts decision to grant summary judgment we review questions of law de novo. We consider all facts and reasonable inferences in the light most favorable to the nonmoving party" *Cawdry v. Hanson Baker Ludlow Drumheller*, P.S. 129 Wn. App. 810, 120 P.3d 605. "A trial court abuses its discretion if the nonmoving party raises a genuine issue of material fact and the trial court fails to resolve the disputed issues of fact" *Brinkerhoff v. Campbell*, 99 Wn. App. 692, 697, 994 P.2d 911 (2000). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds. *State ex rel. Carroll v. Junker*,79 Wn.2d 12,26, 482P.2d715 (1971). A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard. *In re Marriage of Littlefield*, 133 Wn.2d 39, 47 ,940 P. 2d 1362 (1997). "The range of discretionary choices is a question of law and the judge abuses his or her discretion if the discretionary decision is contrary to law." *State v. Neal*, 144 Wn.2d, 600, 609, 30 P.3d 1255 (2001).

Under Civil Rule (CR) 56(c), a complaint may be dismissed on a motion for summary judgment "if the pleadings, depositions, answers to

interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." A dismissal under this rule involves a question of law which is reviewed de novo by an appellate court. See Lamora v. McDonnell Douglas Corp., 91 Wn.2d 345, 349, 588 P.2d 1346 (1979). "This standard of review is consistent with the requirement that evidence and inferences are viewed in favor of the nonmoving party..." see Folsom v. Burger King, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).

Perhaps most on point is the language from Keck v. Collins, 181 Wn. App. 67, 86-7, 325 P.3d 306 (Wash. App. Div. 3) (2014):

> "In a seminal case, our Supreme Court held, 'We feel impelled to set aside the summary judgment, lest there be evidence available that will support the plaintiff's allegations.' ▶ Preston v. Duncan, 55 Wash. 2d. 673, 683, 349 P.2d 605 (1960). After all
>
> > 'summary judgment procedure is a liberal measure, liberally designed for arriving at the truth. It's purpose is not to cut litigants off from their right of trial by jury if they really have evidence which they will offer on trial, it is to carefully test this out, in advance of trial by inquiring and determining whether such evidence exists.'
>
> Id. (quoting ▶ Whitaker v. Coleman, 115 F.2d 305, 307, (5th Cir. 1940)); see also ▶ Barber [v. Bankers Life & Cas. Co.] 81 Wash. 2d. 140, 144, 500 P.2d 88 ('The object and function of summary judgment is to avoid a useless trial. A trial is not useless, but is absolutely necessary where there is a genuine issue as to any material fact.'); ▶ Babcock v. State, 116 Wash. 2d. 596, 599, 809 P.2d 143 (1991) ('Summary judgment exists to examine the sufficiency of legal claims and narrow issues, not as an unfair substitute for trial')."

"The PRA mandates broad public disclosure." Sargent v. Seattle Police Dep't, 179 Wash.2d 376, 385, 314 P.3d 1093 (2013) (citing RCW 42.56.030); Hearst Corp. v. Hoppe, 90 Wash.2d 123, 127, 580 P.2d 246

(1978). It declares that "[t]he people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know." RCW 42.56.030. The PRA is "liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected." Id.

1. RCW 42.56.100 requires that "Agencies shall adopt and enforce reasonable rules and regulations...consonant with the intent of this chapter to provide full public access to public records" **SCC's failure to do so ultimately led to the effective and actual denial of Plaintiff's requests.**

201407-PRR-677 & 201408-PRR-67

201410-PRR-927

Contrary to the trial courts Order Granting Defendant's Motion For Summary Judgment (OGDMFSJ) at #1, 2, 3, and 4 (CP 377-78): SCC's response to these requests are contradicted by the PRA "With respect to the scope of the act, the statute unambiguously provides for a liberal application of its terms" Worthington v. Westnet, 182 Wash.2d 500, 507 (2015). Thus the trial court erred in abusing it's discretion and granting summary judgment where, as articulated by Plaintiff (specifically in his Response To Defendants Motion For Summary Judgment p. 13-18[2]),

2 Briefly quoted (CP 314-317) as follows: "My situations unreasonableness is further compounded and highlighted by: **1)** the fact that my requests are known to be part of an effort to avoid a potential lifetime of total confinement; **2)** the fact that I openly communicated my intent to have my counsel pay (*see* Def. Gill Decl. Attach. A at 5) **3)** for the unexplained and exorbitant costs (contrary to Model Rules WAC

SCC's payment policy is demonstrably unreasonable. CP 312-317. Due to *both* the unreasonable cost and time/payment requirements imposed upon Plaintiff by SCC's Public Record's Policy and/or staff[3] Plaintiff was compelled to make arrangements for payment to the SCC (via his RCW 71.09 legal representation) for his requests. Plaintiff as well communicated and updated this fact to SCC yet SCC still abandoned and

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44-14-07001, Model Rules WAC 44-14-07003, RCW 42.56.120, and RCW 42.56.070(7)(b) etc.) that are contrary to SCC's own published rules (under WAC 388-880-150(3)(b)) as records were already in electronic files/format "there is a folder on the SCC intranet that contains a copy of all the NAPs" per Defendant's Declaration of Medina (at p. 2) and reiterated by Defendant's Declaration of Gill (at p. 2); **4)** that even though "agencies shall not distinguish among persons requesting records" (see RCW 42.56.080) the Model Rules specify that "the size and complexity" of a request would beguile the reasonableness of the use of a form letter for the agency's response timeline but this logic would clearly also apply to SCC's "form letter" requiring a payment timeline of 10 days to the requestor as some payments or the circumstances of payment contain their own issues of "size" (under the circumstances of an individual known to be in total confinement with very limited income given the amount due) and "complexity" (under these circumstances of the requestors need of the records for potential trial strategy and communicating with SCC about his counsel paying for the request (***prior*** to Podriznik asking for the invoice [*see* Plaintiff's Complaint Exhibit 2-D and Def. Gill Decl. Attach. A p.5) due to requestors diminished ability to [quickly] pay it himself) and would certainly beguile the reasonableness with the instant circumstances; **5)** the fact that no "closing letter" for notification was ever given to plaintiff when a closing determination was made by SCC as is required by the spirit of the PRA, "reasonableness", "full access", "the fullest assistance" and also the Model Rules WAC 44-14-04006, and Model. Rules WAC 44-14040(10), this is troubling as Plaintiff continued to communicate about said requests, as is encouraged by the spirit of the PRA, "reasonableness", "full access", "the fullest assistance" and also the Model Rules etc. but SCC still maintains, incredulously, that said request was closed; and **6)** SCC's continued silent withholding regarding dozens of still missing NAP's in violation of RCW 42.56.210."

3 In a footnote in the Defendants motion for summary judgment (CP 94) the defendants claim that "*The SCC charges $0.15 per page for single sided copies, $0.30 per page for double-sided copies, plus the cost of postage. For items provided electronically, the SCC may charge up to $50 per hour for actual time spent scanning documents and creating the electronic media, plus the cost of media, mailing container, and postage. WAC 388-880-150(3).*" But this is not the case in the records request at issue regarding payment because all of the requests at issue were already in electronic format as stated by Plaintiff in his response (CP 315) citing the Defendant's own Declaration of Medina "*there is a folder on the SCC intranet that contains a copy of all the NAPs*" (at #3 CP 226) thus thoroughly establishing unreasonable violations of the PRA and RCW 42.56.

converted Plaintiff's requests to a third party (without authority from the PRA or RCW 42.56) who never submitted a records request but instead only communicated a desire to make payment for my requests. SCC has still never adequately fulfilled this request. Thus the trial court clearly abused it's discretion by granting summary judgment.

2. The PRA and RCW 42.56.070 requires that "[e]ach agency, in accordance with published rules, shall make available for public inspection and copying all public records" but to this day SCC has knowingly and continually failed to live up to these obligations and as such there remains questions of material fact as to the official discharge of their duties

201407-PRR-677 & 201408-PRR-67

201410-PRR-927

Contrary to the trial courts OGDMFSJ at #2, 3, 9, 10, 11, 14, and 17 (CP 378-80): As articulated in Plaintiff's Response To Defendants Motion For Summary Judgment (at CP 312) to date Defendant's have still knowingly and continually failed to provide the requested documents (ALL NAP's) for these requests in their entirety as proven by both Plaintiff's Declaration For Missing New Arrival Profiles (and "NAP" table) and Defendant's own Declaration Of Dr. Carole DeMarco (at #2) where it states that "A New Admission Profile is done when there is a new admission to the SCC"). CP 130. State and local agencies are required to disclose their records upon request, unless the record falls within an exception. See Gendler v. Batiste, 174 Wash.2d 244, 251, 274 P.3d 346 (2012) (citing RCW 42.56.070(1)).

When SCC was made aware that their response(s) to PRR-67, PRR-677 & PRR-927 was inadequate they never further fulfilled the request or took any remedial actions to rectify the situation contrary to established law, the PRA and RCW 42.56 Even when Defendants readily admit knowledge that all NAP's are in fact stored on the SCC living units "Although Mr. Herrick now says, in hindsight, that Ms. Medina should have sifted through every resident's individual clinical file looking for NAPs (Response at 10), there is no evidence indicating that was called for at the time". (CP 369). "Government agencies from whom records have been requested under the Public Records Act (PRA) "are required to make more than a perfunctory search and to follow obvious leads as they are uncovered...The search should not be limited to one or more places if there are additional sources for the information requested...Indeed the agency cannot limit its search to only one record system if there are others that are likely to turn up the information requested...This is not to say, of course, that an agency must search every possible place a record may conceivably be stored, but only those places where it is reasonably likely to be found...The PRA treats a failure to properly respond as a denial... Thus, an inadequate search is comparable to a denial". (emphasis added). See Neighborhood Alliance of Spokane County v. County of Spokane 172 Wash.2d 702, 724, 261 P.3d 119 (2011). Thus the trial court clearly abused it's discretion by granting summary judgment.

201408-PRR-720

Contrary to the trial courts OGDMFSJ at #19, 20, and 21 (CP 380): As stated in Plaintiff's Response To Defendants Motion For Summary Judgment (at CP 324-27) the SCC failed to provide *any* of the requested Alder Unit Meeting Minutes ("AMM") materials through PRR-720 until Plaintiff filed this complaint -thus clearly violating RCW 42.56 and the PRA, even though Plaintiff helped to coordinate the documents location and retrieval and inquired about their status numerous times. The PRA requires agencies "to make more than a perfunctory search and to follow obvious leads as they are uncovered" (italics added) Id. at 724. See also *Gendler v. Batiste,* at 251, *supra.*

For purposes of the public records act (PRA), the adequacy of the agency's search for requested records is judged by a standard of reasonableness, "*construing the facts in the light most favorable to the requestor*". (italics added) Neighborhood Alliance of Spokane County v. County of Spokane (2009) 153 Wash.App. 241, 224 P.3d 775, reconsideration denied, review granted 168 Wash.2d 1039, 233 P.3d 889, affirmed in part, reversed in part 172 Wash.2d 702, 261 P.3d 119. In their summary judgment Defendants cite Kozol v. Washington State Dep't of Corr., 192 Wn. App. 1, 8, 366 P.3d 933 (2015) even though the instant case distinguishes significantly.[4]

4 *Kozol* submitted frivolous PRR's in a concerted effort to unethically gain financially whereas Plaintiff's requests were for legitimate documents needed for the defense of a distinctly possible lifetime of total confinement.

In Kozol the Department of Corrections (DOC) performed an adequate search, by checking different locations etc. before giving up on the search and then ultimately once the records were located gave them to Kozol albeit during the discovery for the PRA complaint. The instant case appears similar (and search adequate) at first glance but after SCC's initial search draws stark contrast as Plaintiff 1) helped to coordinate the records location and 2) openly communicated through the entire process, and 3) at once relayed the fact that the responsive materials were located only to then be told by SCC records staff (Cheryl Medina), after all the (digitally memorialized) interaction and communication, that no such request existed. The search was not adequate. Even after the blatant denial of this pre-existing request Plaintiff still tried to reason with Defendant's about the existence of the request to no avail. I did not receive any responsive materials from PRR-720 until February 26th, 2016, well over a year later.

Insofar as SCC attempts to avoid accountability under the PDA regarding the AMM by stating that requested materials were available and/or provided from elsewhere this position is untenable (as stated in Plaintiff's Response To Defendants Motion For Summary Judgment at CP 312) as "Availability of records from another source does not affect analysis under public disclosure act (PDA); PDA does not exempt records that requester has already received from another source." Tacoma Public Library v. Woessner (1998) 90 Wash.App. 205, 951 P.2d 357, review granted, cause remanded 136 Wash.2d 1030, 972 P.2d 101, on remand

972 P.2d 932. Thus the trial court clearly abused it's discretion by granting summary judgment.

3. Neither the PRA nor RCW 42.56 allows a state agency's purported confusion concerning a specific request to then subsequently justify abandoning that legitimate request, to the contrary trained professionals at the SCC are statutorily and professionally obligated to navigate any potential confusion and seek clarification.

Though the PRA Model Rules are nonbinding (see WAC 44-14-0003) RCW 42.56.570(2) does codify state agencies advisory reliance on WAC PRA Model Rules. "*WAC 44-14-04003(3) Responsibilities of agencies in processing requests*" states "Communicate with requestor. Communication is usually the key to a smooth public records process for both requestors and agencies. Clear requests for a small number of records usually do not require pre-delivery communication with the requestor. However, when an agency receives a large or unclear request, the agency should communicate with the requestor to clarify the request." The SCC has clearly not met this standard with regards to Plaintiff's requests as further outlined below.

201407-PRR-677 & 201408-PRR-67

201410-PRR-927

Contrary to the trial courts OGDMFSJ at #11 (CP 379): SCC failed to seek clarification or input on PRR-67, PRR-677 & PRR-927 regarding Plaintiff's arrangements for payments and instead, without any authority,

abandoned my request and rolled it over into what they disingenuously claimed was a request from my counsel thus themselves causing any existing level of needless confusion[5] that they then tried to use to justify non-compliance with the PRA and RCW 42.56. As well SCC has never communicated about actually fulfilling the requests and has instead chose to simply walk away from and abandon their responsibilities under the PRA and RCW 42.56.

It should be noted that without any elaboration the trial court (in the OGDMFSJ at #11) claims "mutual" confusion when Plaintiff's only potential alleged contribution to any confusion was to simply have his counsel pay for the unexpectedly high payment for his request which certainly fell within the realm of reasonableness described in the PRA and RCW 42.56 and cannot possibly be seen to be confusing. Thus the trial court clearly abused it's discretion by granting summary judgment.

201408-PRR-720

SCC as well failed to seek clarification or input on PRR-720 regarding Plaintiff's claimed (and actual) pre-existing "AMM" request, and even failed to do a simple word search/check of their email system etc. in order

5 In defendant's reply in support of motion for summary judgment (CP 366) they stated that the court "should consider the confusion created by having two persons independently communicating with Ms. Medina about these requests and apparently sending her mixed messages" but the only follow-up communications by Plaintiff's representatives (Podriznik) was to inquire about the payment (after patiently waiting month after payment was made CP 119) that we had paid and which communication should have elicited a reasonable and easy check to verify payment (made in November [CP 336, 338] -but disk of [incomplete to this day] responsive materials was not sent out by SCC records staff until March 6 [CP 120]) instead of turning it into claimed confusion and a subsequent prolonged unreasonable denial of records.

to attempt to verify the accuracy of their errant position. Again SCC has instead chose to simply walk away from and abandon their responsibilities under the PRA and RCW 42.56 and only acknowledged and fulfilled the "AMM" request after Plaintiff filed his PRA complaint, well after their violation of the PRA and RCW 42.56 had occurred. Thus the trial court clearly abused it's discretion by granting summary judgment. When an agency denies a public records request on the grounds that no responsive records exist, its response should show at least some evidence that it sincerely attempted to be helpful. See, e.g., Neighborhood Alliance, 172 Wash.2d at 722, 261 P.3d 119.

4. Plaintiff did in fact state cognizable and legitimate claims under the PRA and RCW 42.56.

201407-PRR-677 & 201408-PRR-67

201410-PRR-927

Contrary to the trial courts OGDMFSJ at #4, and 15 (CP 378-80) and as articulated throughout Plaintiff's Response To Defendants Motion For Summary Judgment (at CP 1-73) Plaintiff did state cognizable and legitimate claims under the PRA and RCW 42.56 including SCC's delaying responsive materials without lawful justification, SCC's failing to produce responsive materials "within a reasonable amount of time" and SCC's failing to produce all responsive requested materials for PRR-67, PRR-677, and PRR-927. Specifically in the Defendant's reply in support of motion for summary judgment it states "Ms. Medina's search was

reasonable in light of the facts and circumstances known to her at the time" (CP 369) (underline added) but the PRA requires agencies "to make more than a perfunctory search and to follow obvious leads ***as they are uncovered***" (underline added) Neighborhood Alliance of Spokane County v. County of Spokane 172 Wash.2d 702, 724, 261 P.3d 119 (2011) which, to date, SCC has never done. State and local agencies are required to disclose their records upon request, unless the record falls within an exception. See Gendler v. Batiste, 174 Wash.2d 244, 251, 274 P.3d 346 (2012) (citing RCW 42.56.070(1)). Thus the trial court clearly abused it's discretion by granting summary judgment.

201408-PRR-720

Contrary to the trial courts OGDMFSJ at #22 (CP 380) and as articulated throughout Plaintiff's Response To Defendants Motion For Summary Judgment (at CP 1-73) Plaintiff did state several cognizable and legitimate claims under the PRA and RCW 42.56 regarding the AMM request including SCC's delaying responsive materials without lawful justification, SCC's failure to perform an adequate search, and SCC's failure to produce responsive materials "within a reasonable amount of time" (until *AFTER* Plaintiff filed his complaint). The PRA requires agencies "to make more than a perfunctory search and to follow obvious leads as they are uncovered" (underline added) Neighborhood Alliance of Spokane County v. County of Spokane 172 Wash.2d 702, 724, 261 P.3d 119 (2011) but even when Plaintiff helped to locate the requested

documents (CP 61-62, 64, and 66) SCC still denied the existence of, and refused to even acknowledge, the records request (CP 68) let alone turn over any responsive materials. This is a text book example of a blatantly inadequate search and response. State and local agencies are required to disclose their records upon request, unless the record falls within an exception. See Gendler v. Batiste, 174 Wash.2d 244, 251, 274 P.3d 346 (2012) (citing RCW 42.56.070(1)). Thus the trial court clearly abused it's discretion by granting summary judgment.

F. CONCLUSION

Due to the numerous examples of the trial court clearly abusing it's discretion the Court should reverse the trial court's summary judgment and all other available relief that this Court deems just should be implemented and granted.

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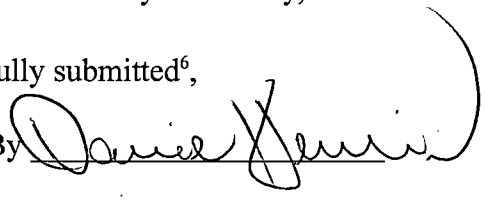
I, the below signed, am 18 years of age or older, am competent, and have personal knowledge, to testify and swear under penalty of perjury that the foregoing statements made in the above are true and correct to the best of my own personal knowledge, and are sworn to in accordance with the laws of the state of Washington.

DATED this 8th day of January, 2018.

Respectfully submitted[6],

By 

Signed at McNeil Island, Pierce County

Donald Herrick
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253-584-9601
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6 Filed utilizing the mailbox rule consistent with GR 3.1.

STATE OF WASHINGTON COURT OF APPEALS

DIVISION TWO

DONALD HERRICK Plaintiff (Pro se), v. SPECIAL COMMITMENT CENTER Defendant(s).	No. 50364-6-II Pierce County Superior Court No. 16-2-04684-9 PLAINTIFF"S DECLARATION OF SERVICE (**filed utilizing the mailbox rule consistent with GR 3.1**)

I, Donald Herrick, declare that, on January 8th, 2018, I deposited the foregoing:

1. Appellant's Opening Brief

in the internal mail system of the Special Commitment Center (consistent with GR 3.1) and made arrangements for postage via 2 large manilla envelopes, addressed to:

Court of Appeals -Division II
950 Broadway, Suite 300
Tacoma, WA 98402

Office of the Attorney General
Attn: Joshua Weir
7141 Cleanwater Drive SW
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Olympia WA, 98504-0124

Donald Herrick –Pro se
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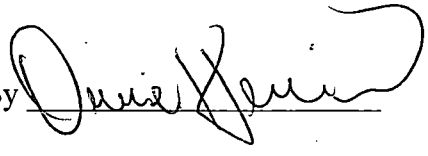
I, the below signed, am 18 years of age or older, competent, and have personal knowledge, to testify and swear under penalty of perjury that the foregoing statements made in the above are true and correct to the best of my own personal knowledge, and are sworn to in accordance with the laws of the state of Washington.

Presented this 8th day of January, 2018

Signed at McNeil Island, Pierce County Washington[1].

By 

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